

ALLEN R. PROUSE

IBLA 77-331

Decided September 30, 1977

Appeal from decision of the Idaho Falls District Office, Bureau of Land Management, renewing grazing lease and rejecting a conflicting application. (I-3-77-1(15))

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--
Grazing Leases: Generally--Grazing Leases: Renewal

Under sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), the holder of an expiring grazing lease receives first priority for the new lease if the requirements of sec. 402(c) are met. Therefore, a conflicting applicant is properly denied the lease where the renewal applicant meets those requirements.

APPEARANCES: Allen R. Prouse, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Allen R. Prouse appeals from the March 10, 1977, decision of the Idaho Falls District Office, Bureau of Land Management (BLM), awarding section 15 grazing lease I-3-77-1(15) to the Eastern Idaho Grazing Association (Eastern Idaho) and rejecting his application for a lease of the same lands. ^{1/} The conflict area consists of approximately 380 acres in sections 4, 5 and 8, T. 4 S., R. 39 E., B.M. Both applicants own or control land contiguous to the federal public land as required for preference to receive a lease under section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970).

The conflict area is bounded on the east by the Blackfoot River. Across the river lie more public lands. These lands plus the conflict area have been leased to Eastern Idaho since 1957. Their preference lands lie east of this area. Appellant's preference lands bound the conflict area on the west and south and are separated from the area by a fence.

^{1/} We note that the District Office did not name Eastern Idaho specifically as an adverse party in its decision. Therefore, appellant was not required to serve Eastern Idaho with appeal documents and to file proof of service with the Board as required by 43 CFR 4.413, although it does appear that appellant sent a copy of its Statement of Reasons to Eastern Idaho. In the future, the District Office should clearly identify adverse parties in its decisions.

In its decision, the BLM District Office found that Blackfoot River would not provide a practical natural barrier if appellant were awarded the lease. Additional fencing would be needed to prevent cattle from crossing the river. No allegations have been made of unsound range management practices, or of violations, by Eastern Idaho while the lands were leased to it. The District Office renewed Eastern Idaho's lease and rejected appellant's application based upon application of existing regulations, including 43 CFR 4121.2-1(d)(2), which provides for consideration of historical use, proper range management and use of water for livestock, proper use of the preference lands, topography, public ingress and egress across preference lands to the public lands under application, and other land use requirements. The decision also relied on sec. 402(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1977), which gives the holder of an expiring grazing lease first priority for receipt of a new lease on the same lands.

In his Statement of Reasons, appellant argues that his range management practices were ignored by the District Office. He asserts that better use of the range would result if the lease were awarded to him. Finally, he argues that the priority right under 43 U.S.C.A. § 1752(c) (West Supp. 1977) creates a monopoly of range use "at the expense of the taxpayer."

[1] In the past, the Board has upheld the renewal of grazing leases and the rejection of conflicting applications where BLM determined that the conflicting applicant had not demonstrated the award was improper under regulatory criteria. In those cases, BLM held, and the Board affirmed, that, all else being equal, the historical use of the renewal applicant was the determinative factor for awarding the lease to him under 43 CFR 4121.2-1(d)(2). E.g., Wesley Leininger, 28 IBLA 93 (1976); Doyr Cornelison, 24 IBLA 155 (1976). However, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C.A. § 1752(c) (West Supp. 1977), enacted on Oct. 21, 1976, provides the following:

So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 1712 of this title or section 1604 of Title 16, (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease. [Emphasis supplied.]

Even if there were some question whether the factors other than historical use listed in 43 CFR 4121.2-1(d)(2) weighed more in appellant's favor than in Eastern Idaho's, Eastern Idaho would be entitled to renewal of its lease as long as it was in good standing under the

old lease. Although appellant argues this creates a monopoly, Congress clearly stated its intentions in House Report No. 94-1163, 1976 U.S. Code Cong. & Ad. News 6175, 6186-87, concerning the provision which became sec. 402(c):

* * * The general principle embodied in the section is that existing grazing operations will be continued so long as the following prevails: The authorized user remains qualified under the law and regulations and accepts and observes the terms and conditions of his lease or permit; and the lands remain in Federal ownership and available for grazing in the discretion of the Secretary concerned.

* * * * *

Subsection (c) specifies that, upon expiration of a lease or permit, existing users would have a right of first refusal for any new lease or permit, provided that grazing will be continued by the Secretary concerned and they are in good standing and accept the terms and conditions of the new lease or permit.

There is no suggestion in the case record that Eastern Idaho was not "in compliance with the rules and regulations issued and the terms and conditions in the * * * lease," nor has appellant alleged such noncompliance. Accordingly, we affirm the decision of the BLM District Office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

